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INTELLIGENCE REPORT

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1 August

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COUNTRY Germany (Russian Zone)

SUBJECT Conference of the CDU Constitution Committee

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SUPPLEMENT

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A meeting of CDU leaders to discuss the future constitution of Germany took place in the Russian Sector of Berlin on 16 April 1947. In attendance were Dr. Lenz (Berlin), Professor Peters (Berlin), Professor Hugo Hickmann (Dresden), Geheimrat von Geben (Dresden), Dr. Reinhold Lobedanz (Schwerin), and Assessor Mampel (Halle). The purpose of the meeting was to orient the representatives of the CDU in the Soviet Zone in anticipation of the new meeting of the international constitutional committee. A certain memorandum of 10 March 1947 was made the subject of business. The guiding principles decided upon were as follows:

1. The Adoption of the Constitution: It was decided that the upper and lower chambers of the future German Republic should adopt the constitution. The Volkskammer, or lower house, would be elected by the people through a system of proportional representation. The Länderkammer, or upper house, would be composed of: (a) representatives of the various Land governments (with each Land having an equal number of representatives) and (b) elected representatives of the Land parliaments, with the size of the Land determining the size of the delegation. Ratification of the constitution would require a simple majority in the Volkskammer and a clear-cut majority of two-thirds or three-quarters in the Länderkammer. The proposal to leave ratification of the constitution up to the individual Länder was rejected unanimously as being too federalistic. Modifications or amendments to the constitution during the first five years after ratification could be made by a simple majority, thus facilitating the correction of structural errors in the document.
2. The Electoral System: Since in the constituent assembly the Volkskammer should be truly representative of public opinion, proportional representation should be adopted as the most adequate electoral form.
3. Division of Jurisdiction between State and Länder: The following changes in the scheme of the March 1947 memorandum were proposed:

A. Into the list of the exclusive legislative rights of the German Republic will be incorporated the following:

- a. The rights of government employees. ~~CONFIDENTIAL~~
- b. Legislation concerning the note-issuing bank.

B. Under the heading of pertinent legislation, the following will be in-

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corporated into the list:

- a. Police and administrative matters.
- b. Incorporation of natural resources and economic enterprises.
- c. Into the list of basic legislation (Grundsatzgesetzgebung) will be incorporated:
 - a. The rights of employees of public corporations.
 - b. The regulation of the press, theaters, radio, and motion pictures.

In addition, it will be up to the German Republic to formulate basic legislation on the subject of school and educational matters, not only concerning the formulation of a standard education system, but also regarding the length of school attendance, the taking of the school certificate examination, and admittance into universities.

- D. The German Republic will have exclusive legislative power over:
 - a. Its relations with foreign countries.
 - b. Freedom of travel, emigration and immigration, plus extradition and citizenship matters.
 - c. Currency matters.
 - d. Customs matters, as well as customs and trade relations and questions concerning the freedom of movement of goods.
 - e. Postal, telegraph, and telephone system regulations, plus railroad and highway matters.
 - f. The rights of government employees.
- E. In the following fields the central government will have the right to legislate (but as long as it does not make use of this right, laws will be made by the individual states):
 - a. Civil rights.
 - b. Criminal law.
 - c. Judiciary procedure, including penal system and administrative assistance.
 - d. Permits, foreign police, and federal criminals.
 - e. Matters concerning clubs, societies, meetings, plus public health, veterinarians, and the protection of flora and fauna.
 - f. Workers' rights, insurance and protection of workers and employees, administration of employment offices.
 - g. The administration of professional societies and guilds within Germany.
 - h. The right of expropriation.
 - i. The incorporation of natural resources and economic enterprises.
 - j. Aid for war veterans and bereaved persons.
 - k. Trade affairs, plus weights and measures

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- l. Distribution of paper money, plus banking and stock exchange matters.
- m. Crafts and mining.
- n. Insurance matters.
- o. Inland transport, including traffic on water, on land, and in the air; the construction of public roads, as long as general traffic is not involved (sic).
- p. Food planning.
- q. Economic planning.
- r. Police and administrative matters.

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F. The German Republic will have the right of basic legislation in the following fields:

- a. Welfare work.
- b. The maintenance of law and order.
- c. The guarantee of religious freedom and the right of free worship.
- d. The field of school and educational matters.
- e. The rights of employees of state-owned corporations.
- f. Real estate regulations and laws pertaining to settlement, establishment of residence, and private dwellings.

4. The Adoption of New Laws: A favorable majority in both the Volks- and Landerkammer will be a prerequisite for the adoption of a law. Legislation through popular referendum should be kept to absolute minimum since popular decisions are easily used for purposes of agitation.

5. The Cabinet of the German Republic:

A. The President of the German Republic, who will represent Germany both at home and abroad, will have the duty of nominating the cabinet and the officials of the German Republic. He will be elected by both houses in joint session. The last regulation is proposed in opposition to the Heppenheimer Memorandum (sic) in order to avoid conflict between the upper and lower houses on this matter.

B. The number and individual titles of cabinet members will not be taken up in the constitution. The German cabinet will require only the confidence of the Volkskammer. If the lower house is to be elected on the basis of proportional representation, the acceptance of a vote of no confidence would require a two-thirds majority, and this would only go into effect if the lower house declared its confidence in the new cabinet. If the majority principle were the basis upon which the lower house were elected, then it would appear that, because of the unequivocal majority relationships which originate out of the majority vote system, it would not be necessary to provide for an extraordinary majority for the acceptance of a vote of no confidence.

6. The Dissolution of the Volkskammer: The Volkskammer will have the right of self-dissolution. Also, the President, with the approval of the Landerkammer, will be able to dissolve the Volkskammer. In the event that the Volkskammer has declared its lack of confidence in a cabinet, and no new cabinet with the confidence of the Volkskammer has been formed by the end of three months, the President may dissolve the Volkskammer.

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7. Administration: Administration should basically be a Land rather than a national government function. In those cases in which legislative authority resides in the German Republic, the cabinet will still retain the right of supervision, which includes the authority on behalf of the German Republic to issue orders to the L nder and the duty of the L nder to furnish information to the cabinet upon request.

A. The following are contemplated as the administrative services of the German Republic:

- a. Foreign service.
- b. Administration of postal, railroad and telegraph matters.
- c. The establishment of a state tribunal.
- d. The criminal office of the German Republic.
- e. The note-issuing bank.

8. Finances: A provision concerning a suitable distribution of sources of taxation is sought for incorporation into the constitution. The distribution so far proposed would be:

- a. Gemeinde
- b. L nder
- c. The German Republic

The division appears to be essential in order that on the one hand the administrative autonomy of the Gemeinde will not be undermined by the curtailment of finances, and on the other hand so that the German Republic will not be dependent on the L nder, or vice versa.

9. Foreign Relations: Relations with foreign countries will be exclusively the affair of the national government. Only relationships with churches may be regulated on the Land level.

10. Nationality: There will be only one nationality, namely German.

11. State Tribunal:

A. The scope of competence of this court should be defined as follows:

- a. Interpretation of the constitution.
- b. Controversies between the national and Land governments.
- c. The arraignment of government ministers.
- d. Disputes between the L nder.
- e. The examination of laws on the basis of their constitutionality.

B. In order that a law may be taken up for the examination of its constitutionality, the approval of a minimum number of representatives from both houses or from the chambers of the highest German courts would be required: roughly a fourth or a fifth of their legal complement would have to approve the reviewing of the law.

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- C. The State Tribunal will be composed of:
- a. The president of the German Supreme Court, who will preside.
 - b. Two judges from the Supreme courts of each Land, who will be chosen by the L nderkammer and Volkskammer.
 - c. Three members chosen from both the L nder and the Volkskammer as observers.

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